SPEECH

ON THE

JUDICIAL TENURE.

BY

GEORGE CHAMBERS.

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SPEECH.

Thursday Nov. 2, A. M.—Mr. Chambers, of Franklin, rose and said:

Without regard to the question immediately before the chair and the committee, I shall consider the great question of judicial tenure as now presented to the committee for their consideration. That question arises on the report submitted by the standing committee on the fifth article, with the several amendments offered to it. As one of the committee to which was referred the fifth article of the Constitution, I have given the subject my best attention, and I united with the majority in favor of the report on the table. That report is in favor of retaining the present judiciary tenure; and I must say, that I have heard nothing, since it was agreed to, to induce me to change the opinions which it goes to sustain. I now ask, as one of the committee,—and as one who has trespassed but little upon the time of this body,—to be permitted to offer a few remarks in explanation of the facts and principles which induce me to form and entertain those opinions.

I do not expect to be able to entertain or instruct this highly enlightened and respectable body; and I shall confine myself to a plain statement of my views. Let us see, in the first place, where we agree. It is conceded on both sides of the house, as an acknowledged and well established principle, that the powers of government, under the existing Constitution, are divided into three branches; the executive, the legislative, and the judicial. This division of power, is an improvement of modern times, in the science of government, not now to be opposed or called in question: it is one that is deemed not only desirable for a free government, but so essential, that the gentleman from Philadelphia county, (Mr. Ingersoll) earnestly urged us to place this principle on the frontispiece of the Constitution, in order that it might be more deeply and permanently impressed upon the minds of every officer whose constitutional duty it is to make, or to execute the laws, or to administer justice according to the laws. Connected with this, there is another principle:—

that it is esssential to the prosperity of a government that the judiciary shall be independent. We only differ, sir, as to the manner of making that department independent, consistently with a due and proper share of responsibility. I, and those who agree in sentiment with me, believe that the tenure of good behaviour is essential to the independence of the judiciary; but to this tenure it is objected, that while it gives independence to that department, it places it beyond the control of the people, or the representatives of the people, makes it irresponsible, and that, under the existing Constitution, our judiciary is independent of the people. This we deny. They are responsible to the representatives of the people; they are amenable to them, and we know of no other mode in which they can, or ought to be held responsible. They should not be held responsible to any other power than the representatives of the people. You do not, in the proposed amendment, attempt to bring them down directly to the people. How are they now amenable? They are appointed during good behaviour; but are liable to be arraigned, tried, condemned, dismissed, and rendered incapable of holding office ever after,—and the tribunal, to which they are thus amenable, is the legislature, the representatives of the people. Is not here then a direct and adequate responsibility? They are responsible directly to the representatives of the people, who are both their accusers and their judges.

Their responsibility does not end even here. They are liable to be removed for other causes than crimes and misdemeanors, on the address of the two branches of the legislature. There may be deficiencies in a judge, which will, without effecting his judicial or moral character, render him incompetent and unfit for the discharge of his duties; and, in those cases, he may be removed on the address of the legislature.

Then we have, in this Constitution, judicial responsibility to a sufficient extent, if the representatives of the people are faithful to their trust, and faithfully discharge their duty. But we are told, that the remedy by impeachment has failed,—that it is not an efficient remedy—that it is a mere mockery of responsibility. I am not willing to admit the fact. But if it is so, whose fault is it? It is the fault of the people's representatives, who fail in the execution of their duty. This is not an objection, then, to the Constitution, but to their representatives, and the people themselves. It is for the people to choose, for their representatives, those who are qualified by their integrity and ability to discharge the trust reposed in them: and, as we contend, they have been chosen in regard to such qualificatiions.

It is said that, under this provision, your judges have been complained of, and have not been removed. If, sir, there is any foundation for this charge—if the representatives of the people have failed to discharge their trust—this is not to be imputed as a reproach to your Constitution, and it cannot, on that account, be said that your judiciary system is a failure.

It is said that under this power your judges have been complained of and have not been removed. Why sir, if there be any thing in this charge, the representatives of the people have failed to perform their trust. Then he would say, that this would not only be charging the representatives of the people with failing in the performance of their duties, but would be imputing a failure to our republican government. In this extended Commonwealth, the people can act in no other way, than through their representatives. There is no other mode of administering a republican government, than by committing certain trusts and powers to the representitives of the people, and it is in vain to say that our representatives cannot be trusted, without surrendering up our republican system. What is the evidence of this sweeping charge that is preferred, not against the Constitution, because it is not an error in the constitution, that our judges have been charged with crimes and have been guilty of crimes, and have not been removed by those who had the power to do it. It is said that in this Commonwealth, during its history, which has been but little short of fifty years, there have been many complaints against judges, many have been impeached, and that but some two have been removed. We have had charges preferred against some five or six or perhaps more of our judges; but not many went to the legislative department of our government, but whatever had been the clamor at home of disappointed men, whether they were suiters or the friends of suiters, or their counsel, these clamors were never presented to the legislature of the Commonwealth, in more than some half dozen or ten cases. Under this system, then, which has existed for a period of near half a century, it appears that complaints have been made against some six, eight or ten judges, and out of that number, one has been removed on conviction, and another on the address of the legislature, and as it seems, the situation of some others were made so uncomfortable on the bench that they retired, and their places were filled by other men. Is it reasonable to suppose that the charges which were made against these judges, and not sustained, were so well founded and so well supported as that conviction should have followed, and that if conviction did not follow, you can only account for it by charging the representatives of the people with being unfaithful to their trust? In doing this we

are reversing all the rules of evidence—we are subverting the whole criminal jurisprudence of the country. With respect to the administration of criminal justice in those courts, which are of the highest authority in the Commonwealth, the innocence of the culprit is to be presumed until you prove his guilt; but here, in relation to judges, who have been passed upon by the senate as a judicial body, and the house of represntatives as the prosecutors, you are called upon to convict them without evidence, before they have been proved guilty, and even after they have been declared innocent. In the case of the veriest criminal in your country, you are to presume he is innocent, until the evidence of the case proves him guilty; but in the other, when it is in relation to the judges who administer your laws, you are asked to presume guilt even against evidence; you are not only called upon to presume that the man accused is not innocent, but you are called upon to presume that the man who has been acquitted by the highest tribunal in the government before which he had been called, as clear of all that had been charged against him, is guilty. There was sufficient protection to the people under the present constitution, if the representatives of the people were faithful to their trust, and neither the people, nor any of the departments of the government had any reason to complain; and he would not insinuate that the representives of the people had not done their duty, and that they had not been faithful to the trusts reposed in them. What a sweeping charge this was to prefer, that the representatives of the people had not been faithful to their trust. It was not that one of the legislative bodies had been unfaithful, and allowed an accused to escape, but it was a charge against all before whom these judges have been tried. It was a condemnation, not only of one of the legislative bodies, or of one legislature, but it was a condemnation of all those whose attention had been directed to this subject. In this condemnation he did not join. How, Mr. Chairman, is the responsibility of these judges to the people proposed to be provided for in the amendment which has been submitted on the part of the minority of the committee on the judiciary, as well as what was contained in the amendment to the amendment. Is there more responsibility to the people provided for in these amendments, than there is under the existing Constitution? Are the people, under those amendments, to pass upon the acts of these judges? No, sir. They are, by the terms of either amendment, made responsible, not to the people, but to the executive. Their responsibility is said to consist in the limited term of their offices, and the uncertainty of their being continued in office beyond that term, unless they deserve it. But to whom are they thus responsible, on

whom are they dependent? Why, it is on the executive. But we will be told that in this executive supervision, the executive will be responsible to the people. Is he, however, more responsible, or is he so much responsible as the immediate representatives of the people, in the two branches of your legislature, one portion of which comes directly from the people annually, and the other portion, every third or fourth year, as we may fix upon hereafter? And yet as a reason for changing the constitutional provision, we are told that the tenure must be limited, because the representatives of the people, who have the power of removal for cause, do not exercise that power. What is there, sir, which entitles the executive of this Commonwealth to such confidence as to place in his hands a power which is equivalent to the power of removal, which power you do not choose to leave with the representatives of the people. It is a fallacy to say that limiting their term of office and making them dependent upon the executive for their continuance in office, is leaving them with the people. This was only substituting one department of the government for another. It is but substituting the executive for the legislative department, and who is more willing to trust the Governor than the legislature? But, say gentlemen, a good officer, a faithful and honest judge, is not to be removed. If he deserves his place, he is to be continued, and it is only the unfaithful and dishonest who are to be removed. What is our security for this? What security have we that the Governor may not remove the judges for some private grief or political prejudice? Why, sir, under the existing Constitution, if a judge is faithful he is secured in his office, but if he is unfaithful, or incompetent, provision is made for his removal, by the representatives of the people, or the address of two thirds of the legislature. This security you have under the existing Constitution, but what security have you that the govnor will re-appoint a faithful and honest judge, or that he will not re-appoint one who is unfaithful. Governors are as liable to abuse their trusts or indulge their partialities, as the representatives of the people, the legislative department, and much more so, in his opinion. But we have been told that in making these appointments, the Governor will regard popular opinion. That may be, or it may not be. It may be that he will refer to the popular opinion of the district in which the judge resides, if he himself is a candidate for re-election; and it may be that for the time that public opinion may be subject to commotion and excitement, and entirely wrong, which, in another twelve months, might have pased off, and for which there might have been no foundation at the time.—But, sir, in an amendment which we have already adopted, and which very probably may become a

constitutional provision, it is proposed to limit the Governor to two terms, amounting, in all, to six years. Then what becomes of that popularity to which you are to appeal, during the last three years of his term. Is he, during that term, to be looked upon as a representative of the people, courting their favor? Is he then, to be looked upon as that officer who will continue the faithful, remove the unfaithful, and have an eye single to the best interests of the Commonwealth, because he is looking to the popular suffrages of his fellow citizens. Sir, by giving the executive this power, we are reposing in his hands that which goes to extend the patronage of the Executive to a tremendous extent. It did, therefore, appear to him, that those who advocated the placing this power in the hands of the executive, under pretence of thereby making the judges responsible to the people, were not only extending the patronage of the executive, against which they have been contending, but that they were laying themselves open to the charge of inconsistency. We have been again and again told that one of the greatest complaints of the people against the existing constitution, was the extent of the executive patronage; the power he had in making appointments to office; and yet here we have a proposition which goes to increase that patronage, by bringing all the judges of the Commonwealth, at stated times, within the power of the executive. It is said, however, that the same governor will not have the power of re-appointing the same judges, which he may have appointed, because their term of office will extend beyond his. He cared not whether it was the same individual or not; it was the same rule by which they were appointed —it was the same department which appointed them, and thereby you place your judiciary at the feet of the executive. If the judges are to be brought home to the people, as gentlemen say, and not only feel their responsibility to them, but that they are also to feel their acts, why not give their election to the people. This intention, however, was totally disclaimed by the gentleman from Luzerne, (Mr. Woodward) who, on the part of the minority of the committee, laid his views before the committee, with ability, eloquence and research, and he has told us that he was opposed to the election of judges, either by the people or by the legislature. Why, sir, if it is to be considered as essential that these judges should be responsible to the people, why not make them directly responsible to the people, why not bring them home directly to the people to be passed upon? But is it making them responsible to the people, to merely make them dependent on the executive for their continuance in office. Why, it is all a farce, to think of making them responsible to the people in this way. They will be no more responsible to the people, by making

them dependent upon the Governor, who is to have their appointment, than they are now, through the immediate representatives of the people, who have the power at any time to remove them by address and impeachment. We who go for a tenure of good behavior, make the judges responsible to the people, by making them removable by the legislature for high crimes and misdemeanors, by impeachment, and we further make them responsible by making them removeable on the address of both houses of the legislature. We go for making them responsible to the people by making them accountable to the representatives of the people in the legislature, and this amendment goes no farther than this, only it proposes to substitute the Governor for the legislature. We, sir, are for the independence of the judiciary.

The independence I want, is an independence of any undue influence from any quarter, that will control or operate on the minds of the judges in the impartial administration of justice according to law. It is an independence not of the people, but an independence for the people, and for the protection of the rights of the humblest citizen of the Commonwealth against oppression, or injustice, from whatever quarter it may be attempted.

It is an independence that will protect the people against any encroachments on their rights by the executive or legislative departments of the government. These powerful departments may usurp and exercise powers not committed to them, but forbidden by the constitutional compact, and against such the individual citizen will vainly resist, without the aid and shield of an independent judiciary to sustain his rights.

It is an independence that will protect the citizen against state power. Let the government be the prosecutor, let official influence be brought in aid of the prosecution, yet with an honest and independent judiciary, the most humble citizen under the panoply of the law, with his virtue, integrity and innocence for his shield, will pass the ordeal of persecution and trial unhurt either in his person, character or estate.

It is an independence that will protect the obscure citizen against party leaders, popular favorites, or any other idol of the day, whose claims may be brought into conflict, and which will be weighed in the scales of justice by the firm and unwavering hand of an independent judge.

It is an independence that will afford the same measure of justice to the poor man, that it does to the man of wealth, let his possessions and interests be as extensive as they may ; and it is sn inde-

pendence that administers to the stranger in the land, the same rule of right and law, that it does to the most influential family, whose possessions and connections surround the place of trial and judgment.

It is for such interests, which are those of the people, that independent judges are wanted, who will pronounce the judgment of the law, regardless of every other consideration than those arising under the law and the evidence. Judges whose term of office is limited to a term of years, before the expiration of their term, will turn their eyes to the appointing power;—whether that power be with the people, the executive or legislative departments, it will have its influence on the feelings and judgment of the judge who is a man with his infirmities. His feelings and his interests will lead him to fear and conciliate that person on whom depends his place, and this when he should alone consider the Constitution and laws by which the rights of all the people are to be decided.

If the judiciary is made dependent on either the executive or legislature for its continuance, is it to be expected that it will willingly hazard the displeasure of either, by placing itself in opposition to usurpation or encroachments by those departments. The effect of it will be to weaken still more the judiciary, which is already the weak department of our republican government; and you deprive the people of the most efficient check which has been devised, to maintain constitutional government and prevent encroachments by the executive or legislature, on the rights of the people.

The judiciary department should take care, in the administration of the laws, that both the other departments of the government, so far as their acts come before them, shall be within proper limits. The Constitution is the paramount law. It is the law emanating from the people, which is to be maintained by your judiciary when it comes into conflict with the usurpations of the other departments of the government. When your executive or legislative departments usurp powers, this is the department which is the sheet anchor of our safety. This is the department which will hold them close by the Constitution, and prevent them from stepping beyond its landmarks. This is the department which is to protect our rights and our liberites, both from the encroachments of government and from the encroachments of powerful individuals.

If it should be considered that there ought to be other responsibility than what now exists in the Constitution, and a change was to be made, he himself would prefer that brought to the notice of the committee, by the gentleman from the county of Philadelphia, (Mr. Ingersoll.) He would prefer going back to the colonial act of 1759,

rather than taking either of the amendments proposed, because we would then have an independent judiciary, and yet have as much responsibility as could be desired.

The difference between that provision and the existing Constitution would be, that instead of having the judges removable as they are now, upon the address of two thirds of the legislature, to have them removable by a bare majority of the legislature. It would then leave your judges during good behaviour, subject to this restriction. Such a provision as this would be much more consistent with the principles of those who affirm that they are for responsibility to the people, than the amendment pending. With this provision, the judges would be made more responsible to the immediate representatives of the people, a majority of the Legislature having the power to remove them, and then they would not be dependent for their continuance in office upon the power that appointed them. Their continuance in office then, would depend upon the people, through their representatives; but adopt the amendment pending, requiring them to be re-appointed by the Governor, and you make their continuance in office depend upon the Governor, and a portion of the Senate. This would be giving the power of appointment to one branch of the government, and the power of removal to another. As it was not in order to present the amendment at the time the gentleman brought it to the notice of the committee, he hoped that before we got through with this article, we could have the opportunity of considering it; not, however, that he was prepared to adopt it now, in preference to the existing Constitution, but that he preferred it to either of the amendments which have been presented. He had voted for the amendment of the gentleman from Beaver, but he only did so because it was preferable to the amendment of the gentleman from Susquehanna; when the question, however, came to be taken between it and the existing Constitution, he would go for the tConstitution as it stands. He was not prepared now to say, but hat he might be induced to vote for this proposition, which had been brought to the notice of the committee by the gentleman from the county of Philadelphia, if a change was to be made, because it would not compromise the independence of the judiciary, and it would make them more responsible to the people than they now are. It may happen, when the community are under the influence of some party feeling, or some sudden commotion, that judges will be removed, for no cause, but when the cause for these feelings has ceased to exist, and when all is calm and tranquil, justice will be done to the removed officer by the public. The public will do him that justice which his merits deserve, and if

injustice should happen to be done, such occasions will be beacons to be referred to, to warn the legislature from inconsiderate acts. This amendment at least combines more of the responsibility to the people than the amendment of the gentleman from Luzerne, which merely goes to transfer the responsibility from one class of representatives of the people to another.

But we have been charged with a surrender of the principle on the part of the majority of this committee, in consenting a limitation in the tenure of the justices of the peace, by making them elective for a term of years. He, however, did not think so. The justices of the peace are nominally a part of the judiciary of Pennsylvania, yet it was but nominally. He conceded that their powers were great and their influence in the administration of the law, was also important; but they have never been considered or treated, either in the legislature of the state, or the public opinion of the country, as a part of your judiciary. Before the adoption of the present Constitution of 1790, it is well known by this Convention that the ordinary quarterly courts were held by the justices of the peace; they composed the quarter sessions and the common pleas. At the time of the adoption of the present Constitution, it was not thought advisable to continue these courts, thus organized, and our courts were differently constituted. It was then declared that "the judicial power of this Commonwealth shall be vested in a supreme court, in courts of oyer and terminer and general jail delivery, in a court of common pleas, orphans' court, register's court and a court of quarter session of the peace for each county: in justices of the peace and such other courts as the legislature may from time to time establish."

Under this Constitution, then, Mr. Chairman, we had our courts reorganized without the justices of the peace forming any part of those courts; although they had before holden those courts. The first legislation under the Constitution of 1790, took away their power as courts. Their place was supplied by the presiding judge, who had the aid of four associate judges. These composed your county courts, and your justices were left with the petty jurisdiction of five pounds. Their jurisdiction at the present time—that is to say, their absolute jurisdiction, from which there can be no appeal—is not beyond the amount of $5 33. In the exercise of their great power beyond that, they rank a little more than ministerial. It is competent for any party who may come before them to insist on a reference of their case to referees, By this reference the case is withdrawn at once from the jurisdiction of the justice of the peace, and from that moment it is entirely beyond it. The justice, after that, has no more to do with it, than the prothonotary of a court in an

action pending, and in which there is entry of rule of reference, He is but the mere machinery of office, by whom the judgment is to be executed, without the possession of any power in relation to it. When these referees are thus chosen, there is an end to his power. The whole matter, so far as it is thus referable, is exclusively within the power of the referees. They pass upon it; and on their report, whatever that may be, the justice must enter judgment. He has no other concern with the matter. He has not even the power to grant a new trial. He is but the minister of the law, whose duty it is to make an entry and return of the report of the referees who may be chosen by the parties to decide upon their case. He enters the judgment upon their report; the prothonotary does the same thing. He issues execution. The prothonotary likewise does the same thing. So that the acts and duties of the justice of the peace affect, to a considerable extent, the rights and interests of the people of the Commonwealth of Pennsylvania; still they are in a great measure but ministerial acts and duties. He is not known, or treated, or recognized as a judge of your courts of law. He is allowed to practice as an attorney in all other cases, excepting in those cases in which an appeal may have been entered from his own judgment, while the law of the land denies to the judge the right to practice in any court or case. You do not choose even to allow him a salary. He is to be compensated for his work, whether it is judicial or ministerial, in the same manner as that in which the clerk of the court is to be compensated. He gets his fees, and nothing more nor less, for his compensation. There is no necessity, Mr. Chiarman, that this tenure of office should be an extended one, so far, I mean, as the independence of the judiciary is affected, as is required in the case of the judge of your courts--because his duties are distinct. The duties of the justice of the peace, so far as they relate to the exercise of his own judgment, are limited to forty shillings, and then, if any question of law is involved, it is open to revision and to correction by your courts of law. As I have before stated, the one great object of having a judiciary, is independence. Without that attribute, your judicial department may, in the exercise of the many important duties which belong to it, be brought into conflict with the other departments of your government. This independence, I say, is essentially requisite to sustain the constitution and the laws, and to guard them against encroachments and usurpation on the part of the other departments. But this is not expected from your justices, because, if they pass judgment, it is subject, as I have said, to the review and correction of your courts of law.

In several of the other states of this Union, Mr. Chairman, where there has been secured, by means of a constitutional provision, a tenure of office during good behaviour to the judges, the justices of the peace have been made elective, and their tenure of office has been limited to a term of years. This is the case in the state of Maine, and also in the state of New York. In those states, the judges of the supreme court, and of the circuit courts also, are commissioned to hold their office during good behaviour. It is not considered that if there was not the same constitutional provision made for the one as for the other, it was a surrender of principle; because if there is any force or meaning at all in the charge of the inconsistency which has been made here against the majority of the committee on the judiciary, in relation to the justices of the peace, it is undoubtedly a two-edged sword, which cuts as well the gentleman from Luzerne, (Mr. Woodward,) who is one of the minority of the committee, as it does the majority.

Mr. Chairman, we have been told by that gentleman, that the justices of the peace constitute a most important branch of the judiciary of the state of Pennsylvania. If this be the fact, how does it happen that a proposition has emanated from him and his friends, to make the justices of the peace elective by the people, for the period of four years. Why does he not also propose to make the judges elective, if it be true that they both stand on an equality. If the justices are not in any respect distinguishable from the judges of your courts, as in reference, I mean, to the power of the judiciary, why not treat them both in the same manner--why elect the justices, and appoint the judges? On what ground does the gentleman justify this difference? There surely must be something, in the opinion of the gentleman, which goes for his limited tenure and this distinct mode of appointment, to separate them from the other judges of the courts; for even the associate judges of the court of common pleas, according to the amendment of the gentleman from Luzerne, should be appointed by the Governor. If they are not distinguishable, the inconsistency which has been charged on the majority of the committee on the judiciary, is certainly as much at the door of that gentleman as it is with the majority of the committee. But, they *are* distinguishable, and the majority of the committee have treated them as being distinguishable.

But again, Mr. Chairman. We have been told that, although the judges ought to be independent, still that they will be so, under a tenure for a limited term of years. Let us examine into this position. How is it so? It has been again and again said here, and with great truth as we all know, that judges are but men, and that their

character is not changed in that respct, by being placed upon the bench. They are still men possessing all the passions, and subject to all the frailties and infirmities of men. You propose then to place these men in a position, where they are to look up to a certain power for reappointment at the expiration of the term of years for which they were originally appointed to office. You are making them dependent, not on the people, as I said before, for their reappointment, but upon the executive; and although, under an amendment which has been adopted by the vote of the committee of the whole, the concurrence of the senate may be required, still the nomination originates with the executive himself. These judges then, being but men with the frailties and infirmities of men, will act with reference to the power on which their place depends--on which, indeed, their very means of subsistence depends. Let us look at this matter, then, in a reasonable light. Is it to be expected that the judges who are thus situated --dependent on the executive for office--is it to be expected, I ask, that such men will willingly hazard the displeasure of the executive, or even of the legislative department, in their discharge of their official duties? It is a conflict which they will be most anxious to avoid, and it will be to them often an unpleasant duty, where there is in the man independence enough to make a sacrifice in the discharge of that duty.

This tenure during good behaviour, I consider, Mr. Chairman, to be a question of very grave importance, so far as it has influence in securing the proper qualifications in those who are candidates for the office. If there is one subject which, more than another, is of deep and vital interest to the people, it is the judiciary of your Commonwealth. It is a department, as has been truly stated by a gentleman who preceded me in this debate, which comes home directly to the people; it is a department of which they have daily cognizance.— The legislature of your state may be in session for a whole winter, and may pass a whole volume of laws, without, perhaps, so many as one hundred of your people knowing, or caring, any thing about what they contain, unless those laws may chance to operate directly on their own peculiar interests. Your executive may go through his term without the people feeling the effects of any of those acts, and without the great body of the people knowing even so much as what they are. But, sir, your judiciary is at all times before the eyes of the people. The people are continually participant in the exercise of the power of this department. They are brought, day after day, to act with, or observe it, either in the character of jurymen, parties, witnesses, or spectators. The matters upon which it is the duty of this department to pass, are matters of inter-

est immediately within their knowledge. They are passing upon the rights of their fellow citizens; and upon the rights of property, within their own immediate neighbourhood. It is then, Mr. Chairman, a department of infinite interest to the people; and, as has been also said, it is also the weak department of our government. It has indeed always been acknowledged to be the weak department in every republican government. It has no patronage to bestow—It has no purse at command. The very exercise of its duties, important and delicate as they are, instead of making it friends, is calculated to raise up enemies. What then do you want, Mr. Chairman, in the qualifications of men who are to fill the high places of that department? It is an office established for the protection of individual right—to maintain the public peace, and to redress the public wrongs. In such an office we require men of undoubted talents, of great legal acquirements—men of experience—men of integrity—and men possessing, in an eminent degree, the confidence of the public.

Qualifications such as these are not to be found in many; and when you do meet with them, you find that they have been mainly obtained by the study and the labour of years. A voluminous code of laws belongs to a republican government. In a country where a people are attentive to their rights, and tenacious of their liberties, there will be litigation. Questions spring up continually in the government of a free people, which are altogether new in their character; and in no country in the world are men more exposed to these questions, than we are, under our republican government, connected as it is with, and dependent as it is on, the action of the federal government. If then men are to be procured who possess the requisite qualifications for these high judicial offices, where do you seek them? You must, of necessity, seek them from among the profession of the law—and the men who possess these high qualifications are men in the possession of a lucrative practice at the bar—and who are enjoying a remuneration much greater than that which the people are willing to allow for the services of their judiciary. What then are the inducements to such men to take this office? Not merely the honor of the place. I think few men would take a judgeship in the Commonwealth of Pennsylvania, or out of it, for the mere honour which is attached to the office. It may do very well to talk about this honor, but it will not extend beyond the first quarter. Men look for something more than honor.

But what, Mr. Chairman, are the inducements to accept these offices, if that of honor alone should not be found sufficient? They are to be found in two considerations; the first of which is, the remunera-

tion—and the second, the tenure of office. The remuneration ought probably to be extended—but you cannot, I believe, extend that far enough to supply the place of the tenure during good behaviour.—You cannot extend it so as to induce men who are qualified for the office, to take it for a term of years. What then would be the effect of this tenure for a term of years? A man who is in the enjoyment of the public confidence, who is in the possession of a large practice, as a professional man, would be unwilling to relinquish that practice, lucrative as it is, for a place which he was to hold only by the uncertain tenure of a term of years. That very situation, if he should accept it, would unfit him to return to the practice of the law. The very duties which belong to a judge are so different in their characters from those which belong to the active life of a lawyer, that a member of the profession is rendered unfit to return to the active duties of the bar when he is so disposed, or in case necessity compelled him to do so. If then, Mr. Chairman, you are to have men who are thus qualified to administer the laws of the land, to decide on the rights of your citizens, and to maintain your constitutional government, you must hold out sufficient inducements to men who are qualified to take the place—and those inducements, in my estimation, are nothing less than the tenure during good behaviour—coupled with a proper responsibility in case of misbehaviour or malfeasance in office. I do not believe that any inducements which you can hold out, short of this, will be sufficient to secure to the state the services of such men as ought alone to occupy these high judicial places in your Commonwealth.

I have thus endeavoured, Mr. Chairman, to present to the committee the reasons which influence me in the belief that the tenure of office during good behaviour, is essential to the independence of the judicial department of our government.

I shall beg leave, in the next place, to turn the attention of the committee, for a short time, to the experience which we have had in relation to that department, and in relation to that tenure. I was very forcibly struck, Mr. Chairman, by a part of the advice which was given by the father of his country in his Farewell Address to the people of the United States, when he was withdrawing from power and place, as we heard it read from that chair, on the 4th July last. I allude to that part in which he deprecates all experiments with the government. I offer no eulogy—it is enough to know that the advice came from WASHINGTON. That great man who had done so much to obtain our independence, and to give stability to our republican form of government and our institutions, gave this emphatic advice—which is now deserving of our notice and regard: "You

ought, says he, to resist with care the *spirit of innovation* upon the principles of the government, however specious the pretext."

"*Time and habit* are at least as necessary to fix the true character of governments, as of other institutions. *Experience* is the surest strandard by which to test the real tendencies of the existing Constitution of the country. *Facility in change*, upon the credit of mere hypothesis and opinions, exposes to perpetual change, from the endless variety of hypothesis and opinion."

This, resumed Mr. C., was the admonition of a patriot and a sage. The proposition which we now have before us, is a proposition to change the existing Constitution of the government, which we have had as our rule and guide for a period of nearly fifty years--and, in relation to this very important branch, to introduce an entire change of tenure.

Notwitstanding what we have heard about the tyranny of this government, of its oppressions, of the abuses which exist in the various departments, I, for one, am free to express my belief that, as a people, we have prospered under it--and that the Commonwealth of Pennsylvania, since the establishment of the Constitution of 1790, has flourished to an extent which has not been surpassed by any of the free states of this Union. There may, indeed, Mr. Chairman, be some cases of individual wrong; there may be some cases of official abuse. I do not dobut, that such may be found. But where, I would ask, in what age of the world, in what government on earth are they not to be found? Where, among the institutions of man, will you search for an exemption from these abuses of office, and of power? What has been our own experience in the Commonwealth of Pennsylvania, in relation to this very department? We have had before us, sir, the history of the movements of the people of Pennsylvania, from the time of the first charter to the present, in reference to this department. The tenure of good behaviour was sought by the freemen of this State in the very first years of the establishment of the government. So far back as the year 1683--the year after the charter--at the instance of the freemen of this state, then a province, there was a concession made to them, on the part of the proprietor, of this very tenure of good behaviour for the judges. A difficulty arose in the administration of that government, and the charter was surrendered in the year 1700. In the year 1706, only a brief interval of six years, we find the same freemen, in their conference, again claiming this right. In the year 1759, we have them actually providing for the tenure of good behaviour, by a legislative enactment. That law having been repealed by the king in council, we have again an expression of opinion on the part of the committee of the legislature,

of which Benjamin Franklin was the organ--complaining that they had not got what had been promised to them--namely, the tenure during good behaviour, for their judges. I will again trouble the committee, by reading what was referred to by my friend from Union, (Mr. Merrill) to whose lucid argument I listened with much gratification, and to whose research I am indebted for much useful information, in relation to the history of Pennsylvania.

The value of that information, must satisfy all who heard it, how desirable it is that there should be published a portion of its documentary history, which is now to be found only in MSS. in the office of the Secretary of State. Every thing connected with it is dear to us now, and will be interesting to those who shall come after us. I read, Mr. Chairman, from the second volume of Franklin's works, at page third. It is an extract from the report of the committee of the assembly of the Commonweath of Pennsylvania--of the date of February 22, 1757--and is from the pen of Benjamin Franklin:

"*Fifthly*, by virtue of the said royal charter, the proprietaries are invested with a power of doing every thing, which "with a complete establishment of justice, unto courts and tribunals, forms of judicature, and manner of proceedings, do belong:" "It was certainly the import and design of this grant that the courts of judicature should be formed, and the judges and officers thereof hold their commissions, in a manner not repugnant, but agreeable to the laws and customs of England; that thereby they might remain free from the influence of persons in power, the rights of the people might be preserved, and their properties effectually secured. That by the guarantee, William Penn, (understanding the said grant in this light,) did, by his original frame of government, covenant and grant with the people, that the judges and other officers should hold their commissions during their "*good behaviour, and no longer.*"

"Notwithstanding which, the Governors of this province have, for many years past, granted all the commissions to the judges of the king's bench, or supreme court of this province, and to the judges of the court of common pleas of the several counties, to be held during their *will and pleasure;* by means whereof the said judges being subject to the influence and directions of the proprietaries, and their Governors, their favorites and creatures, the laws may not be duly administered or executed, but often wrested from their true sense, to some paticular purpose; the foundation of justice may be liable to be destroyed; and the lives, laws, liberties, privileges, and properties of the people thereby rendered precarious and altogether insecure; to the great disgrace of our laws and the inconceivable injury of his majesty's subjects."

Here then, continued Mr. C., we find the legislature of Pennsyvania, in the year 1757, complaining, through their committee of grievances. And what were those grievances? They were that they had not got what William Penn promised to them—namely, that the commissions of the judges should be during good behaviour, but that they were appointed during the will and pleasure of the Governor. And, at that day, this tenure was considered as a matter of interest to the people, and as requisite for the security of the people, and for the independence of the judiciary.

Mr. C. here gave way to Mr. FORWARD, on whose motion, the committee rose, reported progress, and obtained leave to sit again, and

The Convention adjourned.

THURSDAY AFTERNOON, NOVEMBER 2, 1837.

FIFTH ARTICLE.

The Convention again resolved itself into a committee of the whole, Mr. M'SHERRY in the chair, on the report of the committee to whom was referred the fifth article of the Constitution.

The question being on the amendment of Mr. WOODWARD, as amended on motion of Mr. DICKEY,

Mr. CHAMBERS resuumed. Mr. Chairman, when the committee rose this morning, I was exhibiting to the committee the evidence of the acts of the freemen of the province of Pennsylvania, in complaining of the proprietary who had wthheld from them the rights which had been granted, and that the right which they complained had been withheld from them, was the tenure of good behaviour to their judges—complaints commencing with the year 1683, the year after the charter, and extending to the years 1757 and 1759; the act of 1759 being no other than an act claiming this tenure, by legislative provision, as a right, and proposing to give effect to it as such. The last act of the assembly of Pennsylvania, under the proprietary government, was repealed, as I have bofore stated, by the king in council; and we have no record after that period. Why have we not? Because it was a period of trouble between the colony and the mother country, when no concessions were allowed, and when not even conferences were admitted on the subject. The next step which was taken on the part of the colonies, by whom complaints had again and again been made in vain, was the declaration of Independence. At the period then of 1776, we come down to what has

been called the revolutionary government of Pennsylvania, which was established by the Convention in the year 1776. That Constitution has been extolled by gentlemen who advocate the proposed change of the existing tenure under the Constitution of 1790. It is a Constitution which has served its time—a Constitution which, no doubt, in the viw of the men who framed it, was temporary and provisional. It was framed under the exigency of war, with an enemy in the country. It was formed at a time when it was necessary to build up a Constitution which might serve for a season. The people, only a week or two before, by virtue of the declaration of Independence, had separated from the mother country. Having united with their fellow citizens of the other colonies, in declaring themselves independent, it was necessary that a government of some kind or other, should at once be established. The government then was formed at that time with reference to a state of war. It was—and it must be considered as—a government clearly provisional and temporary; for it was not known, and it could not be known, where the revolution would land us, or what would be our relations to the other states of the Union. We had then as a bond of union—articles of confederation which were no more than a rope of sand. In eulogy of this Constitution, it has been said, that it answered triumphantly well the purposes for which it was created—and that it carried us through the war of the revolution. Sir, it was not the Constitution which carried us through that glorious, but fearful struggle. It was the patriotism, the virtue, and the courage of a free people. You might as well say that the articles of confederation had carried us through our struggle, as that the Constitution of 1776 had done so. Sir, I repeat, it was the patriotism of our people that carried us through. It mattered very little indeed what was the form of government, so long as there existed such a spirit in the people.

This form of government, established in 1776, was to be provisional and temporary with reference to a state of war. Its executive was made elective by the council and the assembly. It had but one legislative body. Is there evidence, or is there not, that this Constitution was to be considered as a permanent Constitution, by which the welfare, the liberties, the rights, and the interests of the people of the Commonwealth of Pennsylvania, were to be controlled and governed, after peace was established? Sir, there is no such evidence. On the contrary, we find that during the war, the Constitution was complained of in an address, printed in the year 1779, which was signed by several of those very men who signed the declaration of independence, as well as by other citizens, even during the pressure of the war. And no sooner had peace been established,

than the attention of the freemen of the Commonwealth was directed to the revision of this Constitution. The council of censors, whose office it was under that Constitution to revise it, and to consider and make known what were it defects—were elected only once in the period of seven years. Under that provision, the first council would be elected in the year 1783—the very year afterwards their attention was directed to it, and they considered it as defective, and called for a revision—that is to say, a majority of the council of censors did so. I refer to the proceedings for the call of the Convention at that time, page seventy, for the purpose of shewing what was one of the great grievances to which the attention of the censors was called. The passage is as follows :

"That, by the said Constitution, the judges of the supreme court "are to be commissioned for seven years only, and are removable "(for misbehaviour) at any time, by the general assembly. Your "committee conceive the said Constitution to be, in this respect, "materially defective.

"1. Not only because the lives and property of the citizens must, "in a great degree, depend upon the judges, but the liberties of the "state are evidently connected with their independence.

"2. Because if the assembly should pass an unconstitutional law, "and the judges have virtue enough to refuse to obey it, the same "assembly could instantly remove them.

"3. Because at the close of seven years, the seats of the judges "must depend on the will of the council ; wherefore, the judges "will naturally be under an undue bias, in favor of those upon whose "will their commissions are to depend."

This, continued Mr. C., was the opinion of the majority of the council of censors ; but, inasmuch as it required, under the then existing Constitution, a majority of two-thirds to have a call of a Convention, the call was not at that time had, but the legislature directed its attention to the subject, and so great was the demand on the part of the people for a revision, that they would not wait for the period allotted for another election of censors, which period was not to arrive again for the long space of nearly seven years. When the subject of calling the Convention came up before the legislature, which was on the 24th of March, in the year 1789, as will be found by reference to the same book from which I last quoted, the vote was, in favor of the call 41—against it 17 ; so that more than two thirds, or nearly three-fourths of the legislature of 1789, recommended to the people to call a Convention for the purpose of revising the Constitution. And it is to be remarked here, Mr. Chairman, that this Constitution had never been submitted to the people for

ratification. The Constitution of 1776, as adopted during the revolution and under the pressure of war, never was submitted to the people for their approval or rejection, and we find the people complaining not only by address, but through their organs, immediately after the establishment of peace, of defects in the Constitution, and assigning the tenure of the judges as one of the great grievances under it.

Well, sir, the legislature, by the vote which I have mentioned, determined on having a call of a Convention. Delegates to the Convention were elected by the people, and what is the evidence which we have of public sentiment at that time in relation to the judicial tenure? I will read from page one hundred and fifty-one of the same book. It is as follows:

"*Resolved*, That the judicial department of the Constitution of this Commonwealth should be altered and amended, so as that the judges of the supreme court should hold their commissions during good behaviour and be independent as to their salaries; subject, however, to such restrictions as may hereafter be thought proper."

This resolution, continued Mr. C., was adopted by a vote of fifty-six to eight; and among the yeas, I see the names of WILSON, MCKEAN, WHITEHILL, SNYDER, SMILIE, FINDLEY, IRVING, &c.

When the subject came again before the Convention for final adoption, so united were the members in their opinions upon it, so nearly unanimous, that the constitutional provision which now exists was adopted without a division.

And who, Mr. Chairman, were the members of that Convention? Who were they whose names were registered among the yeas in favor of the adoption of this constitutional provision? They were men of eminence in your Commonwealth, men not only of talents and acquirements, but also of very great experience. The men whose names I have just read were among the most prominent members of the democratic party. Were they not men who had lived under the Constitution of 1776? who had been active, not only as citizens but as public magistrates, under the proprietary government, prior to the year 1776? And were not such men well qualified to give us a form of government, which was suited to our condition and our wants? Great as is the respect which I entertain for the body of which I am here a member, still I am not willing to concede that we are, in any respect, the superiors of the men who formed the Constitution of 1790, or that we possess any advantage over them in any thing to be derived from history, or even from experience. And, sir, I shall be well satisfied if the work of our Constitution, as it shall leave our hands, if it shall subsequently receive the sanction of the people, may promote the prosperity and happiness of this Com-

monwealth, to the same extent as did the Constitution of 1790. Sir, were not the men of that day—those whose names I have read—acquainted with the science of government? Were they not men who had been schooled not only in times which tried men's souls, but schooled in times when the structure of human government, and the question of what form of government was best suited to a free people, was the subject of discussion in popular assemblies, in periodical journals, in the weekly papers, in the ordinary meetings of the people, and at their fire sides? Who was Thomas McKean? Was not he qualified in point of knowledge and of experience to construct for us a form of government? He had been a member of the American Congress, from its opening in 1774, till the peace of 1783—and a part of that time he had been the presiding officer of that body. He was also the chief justice of the state of Pennsylvania, from the year 1777, for the period of twenty-two years, under the Constitutions of 1776 and 1790.

Sir, it is not for us to decry the Constitution of 1790, by underrating the men who framed it. It is not for us to be told here that its features are aristocratic, when those features, thus complained of, were introduced by nearly an unanimous vote. What has been our experience under this Constitution? We admit that our state has prospered, our citizens free and happy, and justice been administered promptly and without delay. The rights of individual citizens have also been protected and the public peace maintained. But, sir, we are told of individual instances of misbehaviour, or oppression, on the part of some of the judges. I am not going into a vindication of any official officer. We are not, sir, I trust, going to try the judges of the Commonwealth—neither the living nor the dead. This is not the place of trial, and if they are to be tried the least that can be done is to give them notice of it. They should know whether we intend to give them a hearing or not. Sir, there may be, and probably always will be, under this or any government, cases of individual wrong. But the question is, will they be fewer in number under a government with a judiciary limited to a certain number of years? For, I would remark, that whatever the mischief, or evil, or inconvenience which may have been experienced, owing either to the incompetency or unfaithfulness of judges, it is not chargeable to the system. It is a circumstance to which every system is exposed; it arises from the infirmity of man, and of human institutions. It is, then, for those to make the experiment of a tenure for years, who may think proper to do so. The experiment of 1776, was tried and abandoned by the very men who introduced it. I have already said that I would not go into a vindication of the conduct of individuals.

This is not the proper tribunal, nor am I qualified, if it was, to enter upon the task. We have been informed that there has been a denial of justice. Now, I am not aware of any recorded evidence of it. We have been told, too, that there are a great many suits remaining on some of the dockets. It is well known, sir, to many of the members of this Convention that the business of the courts was greatly increased ten or fifteen years since, on account of the overtrading that had a few years previously taken place, and in consequence of the controversies which resulted from it, and the sacrifice of property under executions. The business of the courts, for a series of years, increased, I may say ten fold, and it was beyond their ability to dispose of it faster than they did. But, sir, the complaints that were made now no longer exist. Complaints of this character were not confined to Pennsylvania; they were common in other states, under like circumstances. Sir, the cases on your supreme court docket are disposed of, and in the county courts, I am not aware that there is any cause for complaint. But, sir, we were told that the people are dissatisfied with the Constitution, and particularly in regard to that provision of it respecting the judges. What evidence have we, sir, that such is the fact? Why, we have been referred to some petitions that were presented to the legislature in 1805, and 1810, and at one or two periods since. Now, to what do they really amount? They were signed by a few thousand citizens of the Commonwealth; and when we consider and reflect on the manner in which signatures are generally procured to documents of this character, it cannot be regarded as any great evidence of public opinion. Sir, the best method of ascertaining public sentiment is through the ballot boxes. The representatives of the people who came here from every district of the state, in 1823–4, were unwilling to adopt resolutions for the call of a Convention, until they had been laid before the people, in order that they might know what credit to give them, and to see what was their character. But, in 1803–4, the legislature yielded to a strong expression of public sentiment through the ballot boxes. What was it? Why in 1825, a majority of fifteen thousand votes were given against calling a Convention—thus showing that the people were in favor of the existing Constitution—were contented with it, as one that secured them in their rights and their liberties, But, it has been said that reform was wanted—that, at each election for Governor, the people have demanded reform. I know, sir, that we have heard the cry of "reform," and that reform was required. But, of what kind was it? It was a radical reform in the administration of the government—a correction of the abuses of power that was wanted. Here was a field for reform, and a

wide field too. There could be no doubt that reform was desired in the government. Many bad appointments of judges and other officers had been made by the various Governors, and other abuses were known to exist. Sir, the reform, however desired, was in respect to the administration of the government and not the Constitution. We have had party judges, it is said,—men who identfied themselves with the several parties of the country—allowing themselves to be used for party purposes—attending meetings and acting frequently as presiding officers of them; and even descending so low as to become committees of vigilance. In vindication of the conduct of such judges I have nothing to say. They have dishonored their station. A judge has the same political rights as every other citizen, and he has a right to exercise them. He, however, should not be a partisan, for if he be, he will have the prejudices and feelings of a partisan; and if he does not do injustice, he at least will be suspected of it. But, sir, we have been told that the system is tyrannical, arbitrary, and odious to the people. This, sir, I think was the language used by the gentleman from Luzerne, (Mr. Woodward) that the system was odious and disgusting. The gentleman certainly used language which, I think, was uttered without consideration. And he said that the system was so disgusting that its judges were a stench.

Mr. Woodward rose and explained, that the remark he had used was applicable to the system, and not to the judges.

Mr. Chambers resumed: I understand the gentleman. I am not willing to admit that this system has been regarded as disgusting, and that the people have been condemning it from one end of the Commonwealth to the other, while they have been sparing the other departments of the government. I cannot believe that the wrath of the people has been wholly directed against the judiciary. My acquaintance, sir, with the people gives me a very different opinion of what their disposition is, than to suppose that after the election of the present Governor they directed their whole wrath against the judiciary, and had nothing to say to the disparagement of the executive. Why, we have only to take up a newspaper—no matter in what county it was published, and we shall see with what respect he is and has been spoken of ever since he entered upon the discharge of his official duties. Sir, there have been more complaints made against the executive than the judiciary, and that principally on account of the extent of his patronage—in appointing a few county officers. But, it is further objected, that the present tenure of office is odious to the people, and is in fact a life office. I think, sir, with several of my friends, who have addressed the committee, that to

call an office held during good behaviour, a life office, is an abuse of terms. A life office we understand to be an office out of which the incumbent cannot be removed during his life. But, an office held during good behaviour, is the reverse, for the incumbent may be removed whenever misbehaviour or official negligence demands it.—Sir, what are these offices? They are established, are they not, for the public service--to carry out the purposes of the government? For the service of the people, and for the welfare of the people? If the people are satisfied--if they are served properly by faithful and intelligent officers, what difference, I ask, can it possibly make to them, whether the tenure for which their public servants hold, be long or short? Now, sir, I should imagine all that the people require and desire, is to have faithful servants. If offices were to be regarded as rewards to partizans--as bounties to be given to friends, then there would be a reason for multiplying the chances of obtaining office by making the tenure a very short one. But when, sir, we consider that offices were not created for the benefit of individuals, but for that of the public--what difference can it make to them, whether the officers hold for a long or a short tenure, provided they perform their respective duties faithfully and assiduously. Here, then, is a limitation of office of that character; the officer is to continue in office so long as he behaves himself well. Here, I repeat, is a limitation only in regard to the public sevice, and the public welfare. To illustrate this with reference to some occupation of a life of labor, either as connected with agriculture, manufactures, or mechanics, I would say if an individal, who was desirous of having another to serve him in a certain capacity in some business requiring his skill and attention, and that man was engaged elsewhere profitably, he of course would not give up his situation to take another, without first making an inquiry "on what terms will you take me?" You want, for instance, an engagement as master mechanic, or overseer, or some occupation of that kind. The person to whom you have said this, might desire your services, and would say--"I will take you and keep you as long as you continue to do well."—Now, would you, sir, consider this offer as giving the employed a situation for life? If an individual in office misbehaves, he is liable to be tried, condemned and dismissed. Besides, too, he is subject to be removed, on many accounts, without being granted a trial. And thus it is that one set of men are to remove another, and the representatives of the people themselves are to be displaced by the people. Every man knows the terms upon which he takes office. I take it for so long as I behave myself well, and content myself to be judged—by whom? Your public agents--your representatives

pass upon my conduct. Is this, sir, more than reasonable? According as a man may behave well or ill, is the decision of the representatives of the people, and the tenure of the office.

I will now, Mr. Chairman, ask the attention of the committee to the opinion and experience of our fellow citizens of other states and under other governments.

What is public sentiment in relation to judicial tenure among our fellow citizens in other states of this Union, similarly circumstanced with ourselves, having like republican institutions, and with a free people to govern and be governed.

The opinion of the sages and patriots assembled from every part of the United States, who formed the Constitution of the United States, is imperishably exhibited in its provisions in favor of the tenure of good behaviour in the judges of the courts of that government, as essential to the independence of the department, and the maintenance of constitutional government.

The Constitution of the United States, and that of Pennsylvania, are said to be formed on the model of the British government. Was there any partiality at that day for England, or its institutions? No; having just got out of a protracted war with that country, prosecuted under circumstances of oppression and injustice, the prejudices of the country were against that government. Having derived our laws, many of our existing institutions from that country, having the same language and literature to a great extent, our statesmen were not to overlook the lessons of wisdom to be derived from her history. But, sir, was Benjamin Franklin, Thomas Mifflin, James Madison, and others, patriots who formed that Constitution, to be suspected of being under British influence or undue partiality to British institutions. They had not only condemned her wrongs and tyranny in the public councils and legislative halls, but some of them, at the peril of their lives, had encountered her armies on the field of battle.

The civil and political rights of the citizen, and the principles of republican government, were well understood at the adoption of the federal Constitution, and were discussed and maintained in the public journals, and by the writings of a Hamilton, Madison, and Jay, in a work which is referred to at this day as a standard one of authority in political science, and which will be respected and admired so long as our republican institutions are maintained.

I have no undue partiality for any thing British; but, having derived our language and laws from that country, we with propriety looked to it for our forms of government. From the year 1680 down, there was a strong tendency in Great Britain to popular institutions, and a disposition to ameliorate the condition of the peo-

ple. Concessions were made to the people from the kings. There was a like tendency towards amelioration in other governments. Concessions were made in favor of popular rights, in 1701 and afterwards. Chancellor Kent, in his Commentaries, remarks on this subject: (1. Kent Commentaries, 467.)

"The importance of a permanent tenure of office to secure the independence, integrity, and impartiality of judges, was early understood in France. Louis the Eleventh, in 1467, made a memorable declaration, that the judges ought not to be deposed or deprived of their offices but for a forfeiture previously adjudged and judicially declared by a competent tribunal. The same declaration was often confirmed by his successors; and after the first excesses of the French revolution were passed, the same principle obtained a public sanction. And it has now become incorporated as a fundamental principle into the present charter of France, that the judges appointed by the crown shall be immovable. Other European nations have followed the same example; and it is highly probable, that as the principles of free government prevail, the necessity of thus establishing the independence of the judiciary will be generally felt and firmly provided for."

But, sir, we are told that the Constitution of the United States is not a model for us, and that it gives powers to the federal judiciary which do not belong to the judiciary of this state; and that the federal judiciary exercises a political power not belonging to the courts of this Commonwealth. I do not, however, know of any powers which they possess that are not also possessed by the state judges. There are some cases in relation to controversies between states and the construction of treaties which belong to the federal court, but those are not cases of political power; they are questions relative to the rights of property—to the rights of persons and things. If those judges are clothed with political power, it would be a reason why they should not hold their stations by the tenure of good behaviour. If they possessed a political power beyond the reach and control of the people and the other branches of the government, it would be reason for limiting instead of extending their tenure. Sir, we have had presented to us the names of many individuals, as authorities for a tenure, limited by a term of years. The name of Franklin, has, among others, been presented to us, with all the commendations to which it is so justly entitled. But the evidence was so positive that Franklin did not support that tenure in application to the judiciary, that the gentleman from Philadelphia county had dropped him as an authority. Franklin was no doubt in favor of the tenure of good behaviour, and he so expressed himself in his letters. He was in favor

of the federal Constitution, was a member of the Convention which framed it, voted in favor of its adoption, and never expressed any dissent from the tenure of good behaviour provided by it. Dr. Franklin thus writes to Charles Carrol, Esq., May 25, 1789, on the subject of the federal Constitution:

"If any form of government is capable of making a nation happy, ours, I think, bids fair for producing that effect. But, after all, much depends upon the people who are to be governed. We have been guarding against an evil that old states are most liable to— *excess* of power in the rulers—but our present danger seems to be, defect of *obedience in the subjects*."

But, giving up Dr. Fraklin, the gentleman from the county of Philadelphia, (Mr. Ingersoll) took up Dr. Johnson, as an authority, because he expressed his disapprobation of the good behaviour tenure, conferred by the king upon the judiciary. Dr. Johnson is the last individual whose authority should be brought for the instruction of our republicans, in the distribution of the powers of government. He was a high toned tory, and wrote "Taxation no Tyranny;" recommending the strongest coercive measures against the Americans. A pensioner upon the king, he was the advocate of power, and the authority of such a man ought to have little weight with us on this subject. If we must have a British authority, let us be excused from him, and take Dr. Paley, who was not only distinguished in moral science, but whose great mind embraced the whole circle of the sciences. I will read from Arch Deacon Paley's work on Moral Philosophy, the following passage:

"The next security for the impartial administration of justice, especially in decisions to which government is a party, is the independency of the judges. As protection against any illegal attack upon the rights of the subject, by the servants of the crown, is to be sought for from these tribunals, the judges of the land become not unfrequently the arbitrators between the king and the people; on which account they ought to be independent of either; or, what is the same thing, equally dependent upon both; that is, if they be appointed by the one, they should be removable only by the other. This was the policy which dictated the memorable improvement in our Constitution by which the judges, who before the revolution held their offices during the pleasure of the king, can now be deprived of them only by an address from both houses of parliament, as the most regular, solemn and authentic way by which the dissatisfaction of the people can be expressed."

Such are the sentiments of a man who was the subject of a king—that the judges ought to be independent, and, if they were appointed

by one power, should be removable by another. The gentleman from the county, was also pleased to refer to the opinion of Thomas Jefferson. Mr. Jefferson was strongly opposed to the judiciary, after he was President of the United States, and the opinions referred to now by the gentleman were those which he expressed, after he had had occasion to feel the power of an independent judiciary, interposing between him and his favorite objects. Before that time not a word could be found in his writings, expressive of his opposition to the good behaviour tenure. Thomas Jefferson, with all his great talents and acquirements, was a man very much influenced by his personal and political prejudices, which were so strong, and so much warped his judgment, that his opinions may be quoted on any side of almost any question. What, sir, were the opinions of James Madison, a man who commanded universal respect when living, and whose memory is held in reverence and veneration by every American. We find Mr. Madison lending his assistance to revise the Constitution of his native state in 1829 ; and we find him there in favor of a provision securing to the judges the tenure of good behaviour, and requiring two-thirds of the whole of the legislative body, for their removal. I might mention other high authorities in the different states in favor of the tenure of good behaviour. That tenure, has been considered as an essential feature in a republican form of government. I will ask the attention of the committee for a few minutes, to the proceedings of other states on this subject ; and, when we look elsewhere for our authority, we should refer to those states which are placed in like circumstances with our own. I will not go to Arkansas and Michigan for a model of a judiciary, because they are new states, and composed of people who have come suddenly together, and strangers to each other. We are placed under very different circumstances. This is an old state, and our people are known to each other, with fixed and known habits, and accustomed to the same institutions. I look for the lights of experience to the old states, where the population, like ours, is dense —where are to be found a people assimilated in habits, and who have existing institutions. A new state cannot give instruction in government to an old one ; as well might a young man recommend his rules of action to those who have gone through a long and a prosperous and honorable career upon a different system. Let us look for light to the old states.

Of the original thirteen states who adopted the federal Constitution, several have since revised their state Constitutions and modeled them with all the lights and advantages of experience.

The state of Connecticut revised her Constitution in 1819; and though, under her previous government, the judges were elected annually by the legislature, the tenure of the judges of her supreme and superior courts, was changed to that of good behaviour. Maine adopted her Constitution in 1819, and provided for the judges a like tenure of good behaviour. Massachusetts revised her Constitution in 1821, and established a like tenure. In the same year the state of New York revised and amended her Constitution, making the tenure of the judges of the supreme and circuit courts during good behaviour. The judges of the county courts, which are very infeerior courts and recorders of cities, were appointed for the term of five years.

In 1830, Virginia revised and amedned her Constitution, but retained the term of good behaviour for the judges of her courts. Delaware did the same in 1831, and so did North Carolina in 1835.

Six of the original thirteen states have thus revised and amended their state Constitutions within a few years; and with all the lights of their experience, considered it most expedient, safest and best, that the judges who were to administer the laws, should hold their offices so long as they behaved themselves well, subject to removal for misbehaviour, or other causes, by the legislature. In the tenure, and causes, and mode of removal, they differ but little from those now contained in the Constitution of this Commonwealth.

Two of these, Connecticut and New York, restricted the judges of their inferior courts, to a term of years. We are, however, told of the limited tenures of other of the old states. In Vermont, the judges are elected annually. But does any one wish to adopt that system here? If there is one member of this body in favor of it, there is certainly but one? In Rhode Island the judges are annually elected. But Rhode Island is still governed under a charter from King Charles II. and under the same charter her legislature is chosen twice a year. That system is not proposed to be adopted here.—But we are told that the judges in Rhode Island are continued from time to time. Upon inquiry as to the manner in which the system works in Rhode Island, I have learned, that judges are reappointed from year to year by the legislarure, because the salaries are so low that there is no competion for the offices. It is difficult to find any person who will accept the office, and they are obliged to re-elect the incumbent. But, if the salary was raised to a reasonable remuneration, there would be no want of persons to take it, and the changes would be very frequent.

Of New Jersey he would say nothing, because we have heard of the mischievous operation of the system there. In Georgia, they e-

lected their judges for the term of three years. He had made a like inquiry of the operation of the system there, and he was told by an intelligent political opponent of his, a supporter of the present administration of the general government that their system worked badly, and that they were desirous of remedying it. He now come back to the proposed amendments. Those amendments proposed to give different tenures to the judges of our courts—one tenure for the judges of the supreme court, and another for the judges of courts of common pleas. Now he was not able to understand, why it was that the judges of the courts of commou pleas, should not have a tenure as permanent as the judges of the supreme court. It is the judges of your courts of common pleas who are liable to be influenced by public commotion—by faction or by the power and influence of parties litigant. They are men, too, who must decide upon what is before them, at the time it is brought before them; whereas, judges of the supreme court hear a cause argued, and if they are not prepared to decide upon it, they hold it over till they receive farther information, or hear farther argument of the case, free from any popular excitement. The judges of the court of common pleas, however, are passing upon the rights of individuals and parties, in the presence of the parties, and with all those influences around them, which might make, a man who held a dependent situation, swere from his duty. Why was it that a judge thus situated should have tenure different from that of the judges of the supreme court?—Even if he was in favor of limiting the tenure, he wonld not make the tenure of these judges different from the supreme judges. Why, sir, these judges have in their charge the whole criminal jurisprudence of the country. They have the power of passing upon the lives and the liberties of your citizens, without even having the cases brought before the supreme court for revision. He could see no good reason, then, for making any difference in the tenure of these judges, because in his view it was just as proper that the one should have an independent tenure as the other. The independence of the judges of the courts of common pleas, were just as essential to the rights of the citizens, as the independence of the judges of the supreme court. He had occupied more of the time of the committee than he had expected, and would now draw to a close. The subject was one of interest to us all, it was one of interest to the whole people of the Commonwealth, who are now on the stage of action, and of interest to those who are to come after us. We are now passing, not only upon the rights of men of high character, but we are also passing upon a constitutional provision, which may be for good, or it may be for ill, for those present as well as those to come.

He was in favor of making some salutary changes in the Constitution of our state, but he was not for pulling down the pillars of that Constitution, for the purpose of building up some structure of his own fancy, or that of the fancy of some one else. It was to no purpose that we distribute the powers of the government among three departments, if we are not to have an independent judiciary department. If you place it at the feet of the executive, by making it dependent upon him for existence, your distribution of the power of the government is a fallacy, and the independence of your judiciary a mere mockery. Sir, the hands that hold the scales of justice should be firm ones, and he would do nothing to enfeeble them, nor was he willing to deliver over the scales of justice to eyes that will look to the appointing power, when they ought to look to the Constitution and the laws.

THE END.